



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Lori G. Kier
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August 30, 2000

Hon. Susan. L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. E.P.A.
Mail Code 1900L
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Re: Driggs Corporation
Docket No. CWA-III-2000-0008

Dear Judge Biro:

Enclosed please find a copy of the Consent Agreement and Final Order ("CAFO") in the above-captioned case. The original CAFO was filed today with the Regional Hearing Clerk.

Sincerely,

A handwritten signature in cursive script that reads "Lori G. Kier".

Lori G. Kier

Encl.

cc: (w/encl.)
Mr. Yvon Bergevin
Driggs Corp.

Ms. Lydia Guy
Regional Hearing Clerk

Mr. Thomas Lewerenz
EPA Region III Water Protection Division

Mr. Brad Mahanes
EPA Headquarters Office of Enforcement and Compliance Assurance

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

RECEIVED
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REGIONAL HEARING CLERK
EPA, REGION III, PHILA, PA

In the Matter of	:	Docket No. CWA-III-2000-0008
	:	
John Driggs Company, Inc.	:	Proceeding to Assess a Class II
8700 Ashwood Drive	:	Civil Penalty Under Section
Capitol Heights, MD 20743,	:	309(g)(2)(B) of the Clean Water Act
	:	
Respondent.	:	
_____	:	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and John Driggs Company, Inc. ("Respondent"), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 64 Fed. Reg. 40138 (July 23, 1999) (to be codified as 40 C.F.R. Part 22).
2. The Complainant initiated this proceeding for assessment of a Class II Administrative Penalty pursuant to Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), by issuing an Administrative Complaint, Docket No. CWA-3-2000-0008 ("Complaint") to Respondent.

II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

3. Complainant incorporates by reference Paragraphs 3-19 of the First Amended Complaint, and further alleges the following findings of fact and jurisdictional allegations:
 - A. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from point sources to waters of the United States except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
 - B. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and at all times relevant to this Complaint, was the owner and/or operator a concrete recycling operation doing business as DC Rock, located

at 1721 South Capitol Street SW, Washington, D.C. 20024, Standard Industrial Classification (SIC) code numbers 3272 and 5032-11 (the "facility").

- C. Respondent, as the owner and/or operator of the facility, "discharged" "pollutants" with storm water runoff and process water runoff as those terms are defined at Sections 502(6) and 502(16) of the Act, 33 U.S.C. §§1362(6) and 1362(16), and 40 C.F.R. §122.2.
- D. The facility is a "point source" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
- E. As of December 30, 1999, Respondent did not have an NPDES permit for discharges of storm water or discharges of process water from the facility.

III. CONCLUSIONS OF LAW

- 4. Therefore, Respondent was required to obtain a National Pollutant Discharge Elimination System permit prior to the discharging of any pollutants from a point source as a result of an industrial activity.
- 5. Respondent has violated Section 301 of the Act, 33 U.S.C. § 1311, by discharging storm water and process water from its facility to waters of the United States without first obtaining an NPDES permit.
- 6. Pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, Respondent is liable for a civil penalty of up to \$11,000 per day for each day during which a violation occurred.

IV. CONSENT AGREEMENT AND FINAL ORDER

- 7. Respondent neither admits nor denies the factual allegations set forth in Section II above. Respondent admits the jurisdictional allegations set forth in Section II above, and waives any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA jurisdiction to issue this CAFO and not to contest EPA jurisdiction to enforce the terms of this CAFO.
- 8. Respondent neither admits nor denies the Conclusions of Law set forth in Section III above.

9. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

10. Each party to this action shall pay its own costs and attorney fees.

11. The provisions of this CAFO shall be binding upon the Respondent, and its officers, principals, directors, successors and assigns.

12. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

13. Based on the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS, that:

- A. Respondent shall pay a civil penalty of four thousand dollars (\$4,000). This payment shall be made within thirty (30) days following the effective date of this CAFO. Respondent shall mail its payment in the form of a cashier's check or certified check for the penalty to "Treasurer, United States of America" to the following address:

Regional Hearing Clerk
U.S. EPA Region III
Post Office Box 360515
Pittsburgh, PA 15251-6515

Respondent shall send notice of such payment, including a copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Lori G. Kier (3RC20)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- B. If Respondent does not complete the tasks set forth in the Administrative Order for Compliance on Consent (Docket No. CWA-III-2000-109DN) issued this date, Respondent shall pay an additional penalty of ten-thousand dollars (\$ 10,000), within thirty days of receipt of a written demand from EPA, in the same manner as provided in Paragraph 13.A. of this CAFO. Payment of the additional penalty shall not, in itself, relieve Respondent of liability for failure to complete the tasks set forth in the Administrative Order for Compliance on Consent and EPA hereby reserves all rights and remedies available to it to enforce the terms of the Administrative Order for Compliance on Consent.

14. Respondent certifies to EPA by its signature herein that Respondent has taken all steps necessary to obtain a permit under the National Pollutant Discharge Elimination System and is now in compliance with Section 402 of the CWA, 33 U.S.C. § 1342 and its implementing regulations.

15. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. § 1251, *et seq.*, or any regulations promulgated thereunder.

16. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations alleged in this CAFO. Nothing in this CAFO is intended to, nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced for any violations of any other Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with all such laws and regulations. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment.

17. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

18. The penalty specified in Paragraph 13A. (and the additional penalty specified in Paragraph 13.B., if required to be paid) shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

19. Entry of this CAFO is a final settlement of all violations alleged in the Complaint. EPA may institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

20. Failure by Respondent to pay in full the penalty assessed by this CAFO by the due date may subject Respondent to a civil action to collect the assessed penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

21. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717, an executive agency is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. 4 C.F.R. § 102.13(b). Interest will begin to accrue on the civil penalty if it is not paid as directed. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 4 C.F.R. § 102.13(c). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge and interest on the debt be required, it will be assessed as of the first day payment is due. 4 C.F.R. § 102.13(e). Pursuant to 40 C.F.R. § 13.11(b), the costs of the Agency's administrative handling for overdue debts will be assessed monthly throughout the period the debt is overdue.

22. Each undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

23. This CAFO may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

24. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the

event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

25. This CAFO becomes final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk.

FOR RESPONDENT:

By: Saeed Milani-Nia
Name: **SAEED MILANI-NIA**
Title: **V.P.**

FOR COMPLAINANT:

By: Joseph T. Piotrowski
Joseph T. Piotrowski, Acting Director
Water Protection Division

By: Lori G. Kier 8/23/00
Lori G. Kier
Senior Assistant Regional Counsel

SO ORDERED, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. § 22.18,

this 29 day of August, 2000.

Bradley M. Campbell
Bradley M. Campbell
Regional Administrator

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order were sent to the following persons, in the manner specified, on the date below:

Original hand-delivered:

Regional Hearing Clerk (3RC00)
U.S. EPA
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Copy by Regular Mail

Hon. Susan. L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. E.P.A.
Mail Code 1900L
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Mr. Yvon Bergevin
John Driggs Company, Inc.
8700 Ashwood Drive
Capitol Heights, MD 20743

8/30/00
Date

Lori G. Kier
Lori G. Kier